

ORS 23.240  
ORS 23.250  
Homestead exemption  
Extraterritoriality

**In Re Stratton**

**# 600-66349-aer7**

**10/23/01**

**Radcliffe**

**Published**

Debtor owned real property in California which she claimed exempt under the Oregon homestead exemption. The trustee objected. The only issue was whether Oregon's homestead exemption should be given extraterritorial effect.

In a case of first impression, the Court held that it should, relying heavily on In Re Arrol, 170 F.3d 934 (9<sup>th</sup> Cir. 1999) which gave extraterritorial effect to California's homestead exemption. The Court relied on Oregon authority (similar to the California authority relied on by the Arrol court), which noted that the homestead exemption's purpose was to assure the debtor and his family shelter, and the comforts and stability of a home. The Court agreed with the Arrol court that this goal exists independent from state boundaries. The Court also noted the homestead exemption should be liberally construed.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
JUDITH M. STRATTON, ) 600-66349-aer7  
 ) MEMORANDUM OPINION  
 )  
Debtor. )

This matter comes before the court upon the trustee's objections to certain exemptions claimed by the debtor. The debtor claimed exemptions in two vehicles, a Mercedes and a 5<sup>th</sup> wheel trailer, and the Oregon homestead exemption in real property which is located in Lake Forest, California (the property). After a hearing, the trustee's objection was sustained as to the 5<sup>th</sup> wheel trailer; the debtor was allowed to claim her statutory exemption in the Mercedes. The issue of the homestead exemption was taken under advisement.

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1 The parties have agreed, pursuant to the operation of 11  
2 U.S.C. § 522(b) (2) (A)<sup>1</sup>, that Oregon law applies. There is no  
3 dispute that Debtor could claim the homestead exemption in the  
4 property if it were located in Oregon. The sole issue presented is  
5 whether Oregon's homestead exemption should be given  
6 extraterritorial effect. This appears to be a case of first  
7 impression in this district. Based upon the following discussion,  
8 the debtor's exemption should be allowed.

9 DISCUSSION

10 The trustee argues that the Oregon law providing for the  
11 homestead exemption cannot be applied to real property located  
12 outside the State of Oregon. There is ample authority to support  
13 the trustee's position which, in fact, appears to be the majority  
14 view. See In re Halpin, 1994 WL 594199 (Bankr. D. Id. 1994) (WestLaw  
15 only); In re Sipka, 149 B.R. 181 (D. Kan. 1992); In re Peters, 91  
16 B.R. 401 (Bankr. W.D. Tex. 1988); Cherokee Const. Co. v. Harris, 92  
17 Ark. 260, 122 S.W. 485 (1909); Rogers v. Raisor, 60 Iowa 355, 14  
18 N.W. 317 (1882); State Bank of Eagle Grove v. Dougherty, 167 Mo. 1,  
19 66 S.W. 932 (1902); In re Owings, 140 F. 739 (E.D. N.C. 1905); see  
20 generally, 40 Am. Jur. 2d Homestead §14 (1999).

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22 <sup>1</sup>11 U.S.C. § 522 provides, in pertinent part:

23 b. Notwithstanding section 541 of this title, an individual debtor  
24 may exempt from property of the estate. . .

25 2(A) any property that is exempt under. . . State or local law  
26 that is applicable on the date of the filing of the petition at  
the place in which the debtor's domicile has been located for  
the 180 days immediately preceding the date of the filing of  
the petition, or for a longer portion of such 180 day period  
than in any other place. . .

1           This prevailing viewpoint has been called into question,  
2 however, by a recent 9<sup>th</sup> Circuit case, In re Arrol, 170 F.3d 934 (9<sup>th</sup>  
3 Cir. 1999). There, the court allowed a debtor to claim the  
4 California homestead exemption in real property located in Michigan.

5           The trustee urges this court to give a narrow reading to the  
6 Arrol opinion, limiting its application to California law. In so  
7 doing, the trustee relies heavily upon an 1898 Oregon Supreme Court  
8 case, Bond v. Turner, et al., 33 Or. 551, 54 P. 158 (1898). In  
9 addition, he argues, as a matter of policy, that allowing the Oregon  
10 homestead exemption to apply to property outside the State of Oregon  
11 will lead to forum shopping and unfair interference with  
12 debtor/creditor relationships.

13           The debtor maintains that the 9<sup>th</sup> Circuit's holding in Arrol,  
14 is exactly on point. It is consistent with the strong policy  
15 underlying federal bankruptcy law that exemption statutes be  
16 interpreted liberally, in favor of the debtor, to assist with the  
17 debtor's fresh start.

18           Indeed, Arrol does appear to be directly on point. There,  
19 the court noted that "the California exemption statute does not  
20 limit the homestead exemption to dwellings within California." 170  
21 F.3d at 936. The court further noted that:

22           In *Strangman v. Duke*, 140 Cal.App.2d 185, 295  
23 P.2d 12 (1956), the California court of appeals  
24 articulated the legislative goal of "provid[ing] a  
25 place for the family and its surviving members, where  
26 they may reside and enjoy the comforts of a home,  
freed from any anxiety that it may be taken from them  
against their will. . . ." *Id.* at 190, 295 P.2d 12.

1 Id. The court explained that "[t]his goal exists independently from  
2 state boundary lines." Id. In conclusion, the Arrol court stated  
3 "we are mindful of the strong policy underlying both California law  
4 and federal bankruptcy law to interpret exemption statutes liberally  
5 in favor of the debtor." Id. at 937.

6 Like California's homestead exemption statute, Oregon's  
7 homestead exemption is silent as to its extraterritorial effect and  
8 has been so since its enactment in 1893. The current provisions for  
9 the homestead exemption may be found in ORS 23.240 and ORS 23.250.<sup>2</sup>  
10 Nevertheless, the trustee urges that the interpretation given to the

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12 <sup>2</sup> ORS 23.240 provides, in pertinent part:

13 (1) A homestead shall be exempt from sale on execution,  
14 from the lien of every judgment and from liability in any  
15 form for the debts of the owner to the amount in value of  
16 \$25,000, except as otherwise provided by law. The  
17 exemption shall be effective without the necessity of a  
18 claim thereof by the judgment debtor. When two or more  
19 members of a household are debtors whose interests in the  
20 homestead are subject to sale on execution, the lien of a  
21 judgment or liability in any form, their combined  
22 exemptions under this section shall not exceed \$33,000.  
23 The homestead must be the actual abode of and occupied by  
24 the owner, or the owner's spouse, parent or child, but  
25 the exemption shall not be impaired by:

- 26 (a) Temporary removal or temporary absence  
with the intention to reoccupy the same as a  
homestead;  
(b) Removal or absence from the property; or  
(c) The sale of the property.

ORS 23.250 provides:

The homestead mentioned in ORS 23.240 shall consist,  
when not located in any town or city laid off into blocks  
and lots, of any quantity of land not exceeding 160  
acres, and when located in any such town or city, of any  
quantity of land not exceeding one block. However, a  
homestead under this section shall not exceed in value  
the sum of \$25,000 or \$33,000, whichever amount is  
applicable under ORS 23.240 (1).

1 extraterritorial effect of the California homestead exemption may be  
2 distinguished from that accorded to the Oregon statutes, by virtue  
3 of Bond v. Turner, supra.

4 Bond, however, did not involve the homestead exemption, nor  
5 the issue of extraterritoriality. Rather, the Oregon Supreme Court  
6 held that non-residents, who are sued in Oregon, could claim the  
7 Oregon exemptions, in property located in Oregon, to the same extent  
8 as residents. Although the court did indicate that: "[e]xemption  
9 statutes are . . . confined in their operation to the state in which  
10 they are enacted" 33 Or. at 553, this appears to have been mere  
11 dicta.

12 Furthermore, later decisions by the Oregon Supreme Court  
13 reflect the same policy concerns that the Arrol court discovered  
14 when it cited to the California case of Strangman v. Duke, 140 Cal.  
15 App.2d 185, 295 P.2d 12 (1956). In Banfield v. Schulderman, et al.  
16 (In re Banfield's Estate), 137 Or. 167, 298 P. 905 (1931), the  
17 Oregon Supreme Court stated:

18 The object of the homestead exemption laws is well  
19 understood. This object is to assure to the  
20 unfortunate debtor, and his equally unfortunate but  
21 more helpless family, the shelter and the influence of  
22 home; and, in its promotion, courts may well employ  
23 the most liberal and humane rights of interpretation.

24 137 Or at 178, 179; see also, Wilkinson v. Carpenter, 277 Or. 557,  
25 565, 561 P.2d 607, 611 (1977) (the purpose of the homestead  
26 exemption, "is not only to insure indigent individuals the comforts  
of home, but also to protect the general economic welfare of all  
citizens, creditors and debtors alike, by promoting the stability

1 and security of our society." ). As the court noted in Arrol, these  
2 policy goals exist independently from state boundary lines.

3 The trustee's policy arguments are also misplaced. Many of  
4 the policy arguments urged by the trustee were eloquently stated by  
5 the court in In re Halpin, 1994 WL 594199 (Bankr. D. Id. 1994)  
6 (WestLaw only). That case was decided, however, five years before  
7 Arrol, therefore, it lacks persuasive effect. Finally, the  
8 reasoning employed in Arrol has been followed by courts outside the  
9 Ninth Circuit. See, In re Weza, 248 B.R. 470 (Bankr. D.N.H. 2000).

10 CONCLUSION

11 Since the parties have agreed that the property would qualify  
12 as the debtor's homestead if located in Oregon and that Oregon law  
13 applies, this court concludes that the debtor may claim the  
14 homestead exemption, provided by Oregon law, in the property for the  
15 reasons set forth above. The trustee's objection to this exemption  
16 should be overruled and an order consistent herewith entered. This  
17 opinion constitutes the court's findings of fact and conclusions of  
18 law; they shall not be separately stated.

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21 ALBERT E. RADCLIFFE  
22 Chief Bankruptcy Judge  
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